

Rebecca Blaylock Nursery School, Inc. and Mary K. Weaver and Georgia Mae Crawford. Case AO-234

March 31, 1982

ADVISORY OPINION

The petition and brief in support thereof were filed on December 11 and 22, 1981, respectively, by Mary K. Weaver and Georgia Mae Crawford, two former employees of the Employer, Rebecca Blaylock Nursery School, Inc., seeking to determine whether the Board would assert jurisdiction over the Employer.

The petition and supporting brief allege that the Petitioners filed an unfair labor practice charge with the General Counsel of the Board in Case 10-CA-17482, alleging that the Employer, a nonprofit day care center, terminated the Petitioners' employment in violation of the National Labor Relations Act, as amended. The General Counsel dismissed the charge on the grounds that the Employer's gross annual revenue of \$158,479 for the 12-month period ending June 30, 1981, did not meet the Board's discretionary standard of at least \$250,000 gross annual income for asserting jurisdiction over day care centers within its statutory jurisdiction. The Petitioners filed a motion for reconsideration and the matter is now pending before the General Counsel. Although the Employer and the General Counsel were served with copies of the petition and supporting brief, neither has filed a response.

The Board's current standard for asserting jurisdiction over day care centers within its statutory jurisdiction is, as indicated above, an annual gross revenue of at least \$250,000, *Salt & Pepper Nursery School & Kindergarten No. 2*, 222 NLRB 1295 (1976).¹ The Petitioners concede that the Employer's gross annual income does not meet the Board's standard for asserting jurisdiction but contend that the standard should be lowered to extend the benefits and protection of the Act to a larger segment of the day care industry. The Petitioners note that in announcing the \$250,000 standard in *Salt & Pepper*, *supra*, the Board indicated that the standard was being adopted on the basis of existing knowledge of the day care and similar industries and that the standard would be reexamined as more information concerning the operation of day care centers became available. The Petitioners contend that available information now requires such a Board

reexamination. They argue, in essence, that available data, including the size of the day care industry and the number of working parents who depend on the industry for child care, evidence that labor strife in the industry has the potential to greatly disrupt interstate commerce. They contend further that current data indicate that the \$250,000 standard is too high to have a meaningful impact on the industry's labor relations. Thus, the Petitioners urge the Board to lower the standard.

As an alternative, the Petitioners request the Board to lower the jurisdictional standard insofar as it applies to day care centers which receive Federal subsidies.² They argue that the purpose of federally subsidized day care is to assist the unemployed in gaining permanent employment and contend that labor strife among such day care centers may deter the unemployed from using the centers and, thereby, defeat the purpose of the Federal subsidies.

We have considered carefully the petition and the supporting brief and we are of the opinion that the petition should be dismissed. Section 102.98 of the Board's Rules and Regulations provides for state agencies and parties to state proceedings who are in doubt as to whether the Board would assert jurisdiction to petition the Board for an advisory opinion on whether it would assert jurisdiction on the basis of its current standard. Since there is no proceeding involving the question of Board jurisdiction pending in any agency or court of a State or territory, the petition does not satisfy the requirement of the Board's Rules. Also, the Board's advisory opinion proceedings are designed primarily to determine questions as to the applicability of the Board's discretionary jurisdictional standard to an employer's operations.³ Therefore, a request for reconsideration of Board policy or its rules does not come within the intent of the advisory opinion rules. Moreover, assuming it would be proper in this proceeding to consider Petitioners' request to reconsider the Board's standard pertaining to day care centers, on careful review and consideration of the petition and supporting brief, we are not persuaded that we should reconsider our \$250,000 jurisdictional standard for day care centers at this time.⁴

² The Employer herein derives 91 percent of its gross revenue from Federal subsidies.

³ See *Massachusetts Labor Relations Commission (Baystate Bus Corporation)*, 236 NLRB 1357 (1978), and cases cited in fn. 4.

⁴ Member Fanning concurs in the dismissal of the petition on the grounds that reconsideration of Board policy does not come within the intent of the Board's advisory opinion rules. For the reasons enunciated in his dissenting opinion in *Salt & Pepper Nursery & Kindergarten School No. 2*, *supra*, he would assert jurisdiction over day care centers which meet the Board's statutory jurisdictional standard and have gross annual revenues of \$100,000.

¹ See also *The Rhode Island Catholic Orphan Asylum a/k/a St. Aloysius Home*, 224 NLRB 1344 (1976); *The Kent County Association for Retarded Citizens d/b/a J. Arthur Trudeau Center*, 227 NLRB 1439 (1977); *United States Services for the Handicapped*, 239 NLRB 976 (1978); and *Aid for the Retarded, Inc.*, 256 NLRB 678 (1981).

Accordingly, for the reasons set forth herein, the petition for an Advisory Opinion is dismissed.